

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0664; FRL-_____-__]

**Approval and Promulgation of Air Quality Implementation Plans;
Illinois; Indiana; Chicago and Evansville Nonattainment Areas;
Determination of Attainment of the Fine Particle Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Chicago-Gary-Lake County, Illinois-Indiana ("Chicago") and Evansville, Indiana nonattainment areas have attained the 1997 fine particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). These determinations are based upon quality-assured and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 PM_{2.5} NAAQS for the 2006 to 2008 monitoring period. Currently available preliminary data for 2009 are consistent with continued attainment of the standard. As a result of these determinations, the requirements for these areas to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress plan (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard are suspended for so long as the areas continue to attain the 1997 PM_{2.5} NAAQS.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2009-0664. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Melissa M. Barnhart, Environmental Scientist, at (312) 353-8641 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Melissa M. Barnhart, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8641, barnhart.melissa@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Actions is EPA Taking?
- II. What Did EPA Propose?
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- III. What Comments Did EPA Receive and What are EPA's Responses?
- IV. What is the Effect of These Actions?
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- VI. Statutory and Executive Order Reviews.

I. What Actions is EPA Taking?

EPA is determining that the Chicago nonattainment area (including portions in Illinois and Indiana) and the Evansville, Indiana nonattainment area have attained the 1997 PM_{2.5} NAAQS. These determinations are based upon quality-assured and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 PM_{2.5} NAAQS for the 2006 - 2008 monitoring period. Preliminary data available to date for 2009 are consistent with continued attainment of the standard.

II. What Did EPA Propose?

EPA proposed that the Chicago area (including portions in Illinois and Indiana) and the Evansville, Indiana area have

attained the 1997 PM_{2.5} NAAQS. EPA published these proposed determinations on September 24, 2009, at 74 FR 48690. Further details of EPA's review are available in the proposed rule.

A. Chicago Area

EPA reviewed the ambient air monitoring data for the Chicago area in accordance with the provisions of 40 CFR Part 50 Appendix N. All data considered have been recorded in EPA's Air Quality System (AQS) database. The review primarily addressed air quality data collected in the three-year period from 2006 to 2008.

Of sites with data to be compared to the annual standard, the highest three-year average annual concentration for 2006 to 2008 in the Chicago area was recorded at the Schiller Park site, site number 17-031-3103, observing a three-year average annual concentration of 14.6 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). As discussed in the proposed rule, even the sites that are not for comparison to the annual standard are observing average concentrations below the standard. The highest 98th percentile 24-hour average concentration is recorded at the McCook site, site number 17-031-1016, recording a three-year average 98th percentile 24-hour average concentration of 35 $\mu\text{g}/\text{m}^3$. Thus, all sites in the area have three-year average annual PM_{2.5} concentrations below 15.0 $\mu\text{g}/\text{m}^3$ and three-year average 98th

percentile 24-hour average concentrations far below the 1997 standard of 65 $\mu\text{g}/\text{m}^3$.¹ See 74 FR 48692, including footnote 1.

Further consideration of concentrations at Cicero, site 17-031-6005, was necessary because data at this site do not meet completeness requirements, and because the site monitored a violation for the most recent three years with complete data, i.e. 2005 to 2007. A detailed review of concentrations at the Cicero site in relation to concentrations at other similar sites in the Chicago area is provided in the proposed rule. Based on this review, EPA stated its belief that the Cicero site, like other sites in the area, is attaining the $\text{PM}_{2.5}$ standards for the 2006 to 2008 period. 74 FR 48692-48693.

In addition, the averages of available 2009 data from all monitors still operating in the Chicago nonattainment area are at or below the average for corresponding periods in 2006 to 2008, and the 98th percentile of available 24-hour average concentrations is again more than 30 $\mu\text{g}/\text{m}^3$ below the pertinent standard. Therefore, the available data for 2009 are consistent with the finding, based on 2006 to 2008 data, that the Chicago area is attaining the 1997 $\text{PM}_{2.5}$ standards.

B. Evansville Area

¹ EPA erroneously reported the annual average for the Burr Street site, site number 18-089-0026, as 14.9 $\mu\text{g}/\text{m}^3$; the correct value is 14.8 $\mu\text{g}/\text{m}^3$.

EPA reviewed the ambient air monitoring data for the Evansville area in accordance with the provisions of 40 CFR Part 50 Appendix N. All data considered have been recorded in EPA's AQS database. The review primarily addressed air quality data collected at six monitoring sites in the three-year period from 2006 to 2008.

The highest annual average $PM_{2.5}$ concentration in the Evansville nonattainment area for the 2006-2008 monitoring period was $13.7 \mu\text{g}/\text{m}^3$, which occurred both at the Jasper Golf site (site 18-037-0005, in Dubois County) and at the Evansville/West Mill Road site (site 18-163-0012, in Vanderburgh County). The Evansville area also has four additional monitors with data for 2006 to 2008, at which the 2006-2008 three-year average annual concentrations ranged from 13.4 to $13.6 \mu\text{g}/\text{m}^3$. The average 98th percentile 24-hour concentrations ranged from 28 to $32 \mu\text{g}/\text{m}^3$. Thus, the Evansville area is observing concentrations well below the 1997 standards of $15.0 \mu\text{g}/\text{m}^3$ and $65 \mu\text{g}/\text{m}^3$, respectively.

The proposed rule notes a completeness criterion that a site record valid data for at least 75 percent of the scheduled sampling days for each quarter within the applicable three-year period. See 40 CFR 50 Appendix N 4.1. Three sites in the Evansville area, namely the Evansville/West Mill Road site in

Vanderburgh County and the Jasper Golf site and the Jasper Sport Complex site in Dubois County, did not meet this completeness criterion. For these sites, as explained in the proposal (74 FR 48694), EPA conducted a conservative data substitution analysis, assessing whether the site would still have observed attainment under the hypothesis that the monitor on the days of missed samples might have recorded the highest concentration that the monitor observed during the applicable quarter during the 2006 to 2008 period.² Both the Jasper Golf site and the Evansville/West Mill Road site had one or more quarters in 2006 to 2008 that measured less than 75 percent complete data, but in both cases the substitution analysis indicates that the monitors would have shown attainment even with conservative assumptions about the missing data.

At the Jasper Sport Complex site (site 18-037-0004, in Dubois County), the data substitution approach using the highest concentration that the monitor observed during the applicable quarter during the 2006 to 2008 period did not yield a firm conclusion as to whether the site is attaining the annual standard. This site began operation in early 2006 (January 29,

² This conservative substitution test to confirm a passing design value that is based on incomplete data is explained in the EPA guidance document "Guideline On Data Handling Conventions For The PM NAAQS," EPA-454/R-99-008, April 1999, at page 16.
(<http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf>)

2006), and so earlier (e.g. 2005 to 2007) three-year averages were not available. As EPA explained in its proposal (74 FR 48694), another method available to evaluate these data is to examine the data at this site in relation to data at other similar sites in the area, to judge the likelihood that the monitor would have shown attainment had it collected complete data. The available data at this site have always indicated annual average concentrations below $15.0 \mu\text{g}/\text{m}^3$ and 24-hour concentrations below $65 \mu\text{g}/\text{m}^3$. The available data at this site are similar to the data at other nearby sites in the area. Therefore, EPA believes this site, like the other sites in the Evansville area, is attaining the standards. In addition, all sites with data from 2005 to 2007 recorded measurements showing attainment for that period as well. Therefore, EPA proposed to find that all sites in the Evansville area, including sites that did not meet the 75 percent completeness requirement, are now meeting the 1997 NAAQS. See 40 CFR 50 Appendix N 4.1 and 4.2.

In addition, EPA examined data from the first half of 2009. For each site, the average of available 2009 data is at or below the average for corresponding periods in 2006 to 2008 and the 98th percentile of available 24-hour average concentrations is again more than $30 \mu\text{g}/\text{m}^3$ below the pertinent standard. Therefore, EPA observed that the available data for 2009 are consistent

with the finding, based on 2006 to 2008 data, that the Evansville area is attaining the 1997 PM_{2.5} standards.

III. What Comments Did EPA Receive and What are EPA's Responses?

EPA received a total of four sets of comments in response to these actions, including comments by Indiana Steel Environmental Group (ISEG), the Northwest Indiana Forum, Valley Watch, Inc., and one anonymous commenter. ISEG and the Northwest Indiana Forum supported EPA's proposed determinations of attainment of the 1997 PM_{2.5} NAAQS for the Chicago and Evansville areas. In this section, EPA responds to the adverse comments received in response to the September 24, 2009, proposed rulemaking. EPA did not receive any adverse comments specifically directed at its proposed determination of attainment for the Chicago area.

Comment: Valley Watch requests that EPA accept its "comments objecting to EPA's proposal to redesignate the Evansville, IN area to 'attainment' of the 1997 standard for PM_{2.5}." Valley Watch also submitted to this rulemaking the same comments that it submitted to the Indiana Department of Environmental Management (IDEM) in March, 2008, at a State hearing on the State's planned petition for redesignation of the Evansville area. Many of those comments include contentions about the health effects of PM_{2.5}, the status of the Clean Air

Interstate Rule (CAIR), and the potential impact of new power plants that Valley Watch believes will increase emissions of fine particulate matter precursors. Valley Watch also expressed its concern that the recent economic downturn is responsible for temporary decreases in concentrations of PM_{2.5}, and thus the "low" levels of particulate matter being measured are not due to permanent and enforceable emissions limitations.

Response: As EPA stated in its proposal (74 FR 48695), EPA in this rulemaking is merely determining that the Evansville area is attaining the 1997 PM_{2.5} standards, based on the most recent three years of quality assured air monitoring data. EPA is not redesignating the area under section 107(d)(3)(E) of the Clean Air Act (CAA). EPA is not evaluating whether any of the other criteria for redesignation, as set forth in section 107(d)(3)(E) of the CAA, have been met. The only issue before EPA in this rulemaking is whether the air quality monitored in the area meets the 1997 PM_{2.5} standards. Therefore, any comments that address other issues pertaining to redesignation, and that do not address the question of whether, as a matter of air quality, the area is attaining the 1997 PM_{2.5} standards, are not relevant to this rulemaking. For example, the causes of air quality levels - whether they are due to permanent and enforceable emissions reductions and whether such reductions

will be maintained over time - are not addressed in a determination of attainment. Nor is there any relevance for this rulemaking of commenter's assertions regarding the impact of CAIR or other regulatory regimes or emissions from prospective new power plants. If, in the future, EPA determines that the area has lapsed out of attainment with the standards, EPA would take action to withdraw its determination of attainment. Thus, comments addressing issues other than whether air quality currently meets the 1997 PM_{2.5} standards are not relevant to this determination of attainment.

Comment: Valley Watch contends that there are "huge gaps" in the data for 2006-2007, and that this action should not go forward until more data are collected. The commenter claims that gaps of 13 percent and 16 percent occurred in 2006 and 2007, respectively, when "mysteriously or perhaps fraudulently data seemed to just disappear at times when fine particle levels were elevating at other regional monitors." Valley Watch submitted these comments to Indiana on March 27, 2008, in response to a State solicitation of comments on a prospective request for redesignation of the Evansville area; Valley Watch then attached those comments to its comments on EPA's proposed clean data determination.

The commenter focuses on data at the Evansville Civic

Center monitor (site number 18-163-0006). The commenter in particular notes for this site that "[i]n June, six out of ten measurements are missing. In August, five out ten measurements are also missing."

Response: The Evansville Civic Center site has two operating instruments. The shortfall in data collection noted by the commenter occurred in 2007 for one of these instruments ("Instrument 1"). However, many of the days lacking valid data at Instrument 1 had valid data at Instrument 2. Since both instruments collect equally valid data, EPA views valid data from Instrument 2 as a suitable substitute for missing data from Instrument 1, and in fact EPA treats the site as having valid data for such days.³ In particular for June and August of 2007, EPA finds that seven of the ten scheduled sampling days in June 2007 and nine of the eleven scheduled sampling days in August 2007 had valid data. Similarly for the full year, using data from Instrument 2 where data are missing from Instrument 1, EPA finds for 2007 for example that this site has valid data for 92 percent of the days, not 84 percent.

³ The use of data from a second instrument in place of missing data from the first instrument is explained in the EPA guidance document "Guideline On Data Handling Conventions For The PM NAAQS," EPA-454/R-99-008, April 1999, at page 16. (<http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf>)

The commenter expresses concern that the days it considers to lack data may disproportionately be days with high concentrations. Indeed, for the six days in the two months at the site especially in question (June and August 2007 at the Civic Center site) for which Instrument 2 obtained valid data and Instrument 1 did not, the average concentration was 20.0 $\mu\text{g}/\text{m}^3$. The commenter may believe that availability of more complete data and inclusion of that data in the calculation of average concentrations at the Civic Center would have yielded a computed violation. However, in EPA's view, a majority of the days that the commenter considers to lack data in fact have data, and EPA included those data in its computation of average concentrations. The results, as reported in the proposed rulemaking, are well below the applicable standard. EPA has no reason to believe that the days without data on average would have had concentrations higher (or lower) than the average for the applicable quarter, e.g., that the days without data in the third quarter of 2007 at this site on average would have had concentrations higher than the quarterly average of 18.27 $\mu\text{g}/\text{m}^3$, much less that the data on average would have been enough higher to yield a three-year average greater than 15.0 $\mu\text{g}/\text{m}^3$. Inasmuch as the combined data set from the two instruments meets the data completeness requirements of 40 CFR 50 Appendix N 4.1(b), EPA

believes that sufficient data are available to have adequate confidence in the result, i.e., that the site is attaining the standards.

EPA computes annual average concentration through a multi-step process in which it first computes quarterly average concentrations and then computes each year's average concentration as an average of the four quarterly average concentrations. This process assures that the four quarters are equally represented in the computation of the annual average, so that differences in the data completeness for different quarters do not influence the computed annual average. EPA agrees that summer concentrations in Evansville tend to be higher than concentrations at other times of year, but EPA does not expect a modest number of missing summer values (e.g., for the Civic Center site in 2007, 3 values in June and 2 values in August) to introduce any significant potential for bias in the average values for the respective quarters that are used in computing the annual average.

The proposed rulemaking addressed a number of issues relating to data completeness. The proposal notes EPA's completeness criterion that a site have valid data for at least 75 percent of the scheduled samples in all twelve quarters of the applicable three years, reflecting EPA's view that this

quantity of data provides an adequate representation of each quarter, i.e., EPA has adequate confidence that a complete data set would not be expected to show a significantly different average (or peak) concentration. The proposed rulemaking also addresses three sites (not including the Civic Center site; instead including the West Mill Road site in Vanderburgh County (site 18-163-0012) and the Jasper Sports Complex and Jasper Golf sites (sites 18-037-0004 and 18-037-0005) in Dubois County) that had quarters with less than 75 percent data capture, describing the data substitution analyses that EPA performed to assess whether it is plausible that complete data would have shown these sites to violate the standards.

The commenter did not comment on any of this discussion in the proposed rulemaking. Specifically, the commenter did not comment on EPA's 75 percent completeness criterion, and the commenter did not comment on the analyses EPA conducted for sites for which that criterion was unmet. Indeed, by excluding the Civic Center site from its list of sites not meeting this completeness criterion, EPA made clear that it viewed the Civic Center as meeting this completeness criterion, and yet the commenter did not expressly challenge this EPA view. Furthermore, the commenter made no mention of the Dubois County sites, to which a majority of the Evansville area data

completeness issues apply. As a result, EPA has no reason to change its views on the completeness criterion, the application of that criterion to the Evansville area, the analyses of Evansville air quality data, or the conclusion that EPA has adequate confidence that the Evansville area is attaining the 1997 air quality standards. EPA finds there is no evidence that data have "fraudulently" or "mysteriously" disappeared, as commenter contends. Valley Watch's comments on the State's redesignation request were submitted prior to the time that calendar year data for 2008 were recorded and quality-assured and certified. After Valley Watch's comments on the redesignation request were submitted, more data have been acquired and evaluated for purposes of EPA's determination of attainment. Thus Valley Watch's analysis contained only a partial and outdated review of the relevant data. EPA finds no need for an additional "independent" analysis that was requested by the commenter in its comments on redesignation.

Comment: Valley Watch, in its March, 2008 comments on the request for redesignation that IDEM had proposed, included criticisms of 2004 and 2005 data, and requested that the redesignation be stopped "until at least another year of data is collected" in order to see air quality trends.

Response: EPA is making its determination of attainment based on 2006-2008 quality-assured data, rather than 2004-2006 data. Although in fact EPA believes that Evansville attained the standards based on 2004 to 2006 data, air quality for that period are not relevant to EPA's determination that the area is currently attaining the standards. The commenter prepared the substance of his analysis of the data in March 2008, and did not update his review to include the more recent data used by EPA, or EPA's evaluation and conclusions with respect to those data. It has now been more than a year and a half since Valley Watch submitted its March 2008 comments, and more than another year of data has been collected which shows continued attainment of the PM_{2.5} standards. Thus commenter's wish for another year of quality-assured data has been satisfied.

Comment: The commenter includes a series of comments related to criteria for redesignation that do not bear on the question of whether or not the area is currently attaining the standard. The commenter contends that "Utility executives that Valley Watch has consulted indicate that throughout 2008 and 2009 electrical generation demand has reduced nearly 25% in the region." The commenter argues that this decrease in demand would yield a commensurate reduction in the formation of fine particles and that economic recovery will result in a rise of

electrical production and fine particle levels; thus this decrease "cannot be considered as federally enforceable for redesignation purposes." Further, "[n]umerous, already under construction, approved or soon to be approved new coal plants will add to an already fragile 'attainment' of the NAAQS for fine particles."

Response: EPA's determination here is limited to a finding that the area's air quality currently meets the 1997 PM_{2.5} standards. Unlike the case for redesignations, EPA need not evaluate whether the air quality improvement is due to permanent and enforceable reductions, and projections as to whether the air quality standards will be maintained in the future also are not germane to EPA's determination of attainment here. Moreover, the future impact of new sources and potential new sources on the area has and will be assessed in the context of permitting of those sources. For the reasons set forth in the discussions of EPA's review of the data in this final rulemaking and in its proposal, EPA does not agree with the commenter's contentions that currently monitored levels are too close to the 1997 standards for EPA to make determinations of attainment, or that the data recorded at the monitors are "skewed low". In the future, if EPA determines that the area no longer is attaining

the standards, EPA will take action, after notice-and-comment rulemaking, to withdraw its determination.

Comment: The commenter states that "EPA's Clean Air Scientific Advisory Committee (CASAC), a blue ribbon panel of scientists, recommended in 2005 and 2006 that the annual NAAQS for fine particles be set at a level as low as $13 \mu\text{g}/\text{m}^3$ and no higher than $14 \mu\text{g}/\text{m}^3$." In addition, "[a]s further proof that residents of this area are forced to breathe unhealthy air, a study conducted by the Partnership for Healthcare Information through the University of Southern Indiana found that 'In 1996, Vanderburgh County had a hospitalization rate of 51.7 per 10,000 versus 32.2 per 10,000 in Allen County for the 0-3 age group; for the 4-8 year old group, Vanderburgh County's rate was 35.2 while Allen County's rate was 10.5; and the 9-13 year group showed 40.2 for Vanderburgh County and 8.3 for Allen County.'"

Response: This rulemaking addresses whether air quality in the Evansville area is meeting the 1997 $\text{PM}_{2.5}$ air quality standards, based on the most recent quality-assured monitoring data. It is not relevant to this determination that EPA has subsequently lowered the 24-hour standard or that the commenter believes EPA should have set the annual standard lower. Challenges to the $\text{PM}_{2.5}$ standards have been raised in other proceedings, and are not properly brought here. Moreover, the

historical study of health indicators in Vanderburgh and Allen Counties, which cites to information collected in 1996, and the question of whether the current air quality standards are health protective, are not relevant to the only question at issue here, which is whether the Evansville area is meeting the 1997 PM_{2.5} standards that are in place.

Based on the reasons previously discussed, EPA continues to believe that determinations of attainment are warranted for the Chicago (Illinois and Indiana) and Evansville (Indiana) areas.

Comment: Valley Watch makes numerous allegations reflecting a view that the Evansville data and the officials responsible for collecting and reporting these data are not to be trusted. These comments include allegations that the local agency may have avoided collecting data particularly on days with high concentrations. The commenter seeks investigation of a discrepancy between the value reported by the local agency versus the value reported by the State for July 7, 2007. The commenter believes that EPA's computation involves rounding of a value above the standard to a value found to meet the standard; the commenter finds this a problematic "bureaucratic spin." The commenter contends that, given the missing data, the commenter finds the values too close to the standard to be sure that the area is meeting the standard.

Response: The commenter provides no credible evidence to justify the allegations that are lodged. Most relevantly here, EPA finds no reason to question the data that the State has certified as accurate, and EPA has no grounds for believing that the collected data are unrepresentative of the quarters during which they were collected. EPA used values reported in the AQS, not the values in either of the reports cited by the commenter, and, in any case, EPA finds that July 7, 2007 was not a scheduled sampling day and evidently no concentration measurements were made.⁴ The comments regarding rounding and being close to the standard are not relevant to data from 2006 to 2008, which show annual average concentrations at all sites (with or without rounding as dictated under Appendix N) being more than 1 $\mu\text{g}/\text{m}^3$ below the standard.

Comment: An anonymous commenter stated the view that "cities are absolutely disgusting," and that "they are getting way out of control. We need to do whatever it takes to clean them up!"

Response: This comment does not address the actual air quality levels for the Chicago and Evansville areas or how those

⁴ The monitor at issue with regard to July 7, 2007 (at site number 18-163-0012) was operating on an every third day schedule in 2007. The dates of sampling for this schedule are set by EPA so that the same days are monitored in all locations, and are posted at <http://www.epa.gov/ttn/amtic/files/ambient/pm25/cal2007.pdf>.

levels compare to the 1997 PM_{2.5} NAAQS. It is thus not germane to whether the Chicago and Evansville areas are attaining those standards.

IV. What is the Effect of These Actions?

On the basis of this review, EPA is determining that the Chicago area and the Evansville area have attained the 1997 PM_{2.5} NAAQS based on 2006-2008 data. In addition, monitoring data for 2009 that are available to date in the EPA AQS database, but not yet certified, indicate that these areas continues to attain the 1997 PM_{2.5}.

Under the provisions of EPA's PM_{2.5} implementation rule (see 40 CFR 51.1004(c)), the requirements for Illinois and Indiana to submit attainment demonstrations and associated RACM, RFPs, contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS for the Chicago and Evansville PM_{2.5} nonattainment areas are suspended for so long as the areas continue to attain the 1997 PM_{2.5} NAAQS.

As further discussed below, these determinations will: (1) for the Chicago and Evansville nonattainment areas, suspend the requirements for the submittal of attainment demonstrations and associated RACM, RFPs, contingency measures, and any other planning SIP revisions related to attainment of the 1997 PM_{2.5} NAAQS; (2) continue until such time, if any, that EPA

subsequently determines that one of the areas has violated the 1997 PM_{2.5} NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Chicago and Evansville areas based on the 2006 PM_{2.5} NAAQS; and (4) remain in effect regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS. Furthermore, as described below, any such final determination is not equivalent to the redesignation of the area to attainment based on the 1997 PM_{2.5} NAAQS.

If EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that either or both areas have violated the 1997 PM_{2.5} NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist for the pertinent area(s), and EPA would take action to withdraw the determination and direct the pertinent area(s) to address the suspended requirements.

The determinations that the air quality data show attainment of the 1997 PM_{2.5} NAAQS are not equivalent to the redesignation of the areas to attainment. These actions do not constitute a redesignation to attainment under 107(d)(3) of the CAA, because we do not yet have approved maintenance plans for the areas as required under 175A of the CAA, nor have we determined whether the areas have met the other requirements for

redesignation. The designation status of the areas will remain nonattainment for the 1997 PM_{2.5} NAAQS until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment.

These actions are limited to determinations that the Chicago and Evansville areas have attained the 1997 PM_{2.5} NAAQS. The 1997 PM_{2.5} NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7.

The 2006 PM_{2.5} NAAQS, which became effective on December 18, 2006 (71 FR 61144), are set forth at 40 CFR 50.13. EPA has recently determined that the Chicago and Evansville areas meet the 2006 24-hour PM_{2.5} NAAQS, and has designated the areas as unclassifiable/attainment for the 2006 24-hour NAAQS. 74 FR 58688, 58726-58729 (November 13, 2009). The status of the 2006 annual NAAQS designations is described in the 2006 24-hour NAAQS designations notice. 74 FR 58690-58691. However, designations for the 2006 PM_{2.5} NAAQS are independent of today's determinations that the Chicago and Evansville areas are attaining the 1997 PM_{2.5} NAAQS.

If the Chicago and Evansville areas continue to attain the 1997 PM_{2.5} NAAQS, the requirements for Illinois and Indiana to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and any other planning SIPs related to

attainment of the 1997 PM_{2.5} NAAQS in these areas would remain suspended.

V. When Are These Actions Effective?

EPA finds that there is good cause for these determinations to become effective on the date of publication of these actions in the Federal Register, because a delayed effective date is unnecessary due to the nature of the actions. The expedited effective date for these actions is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." As noted above, these determinations of attainment will result in a suspension of the requirements for Chicago and Evansville to submit an attainment demonstration, a RFP, section 172(c)(9) contingency measures, and any other planning SIPs related to attainment of the 1997 PM_{2.5} NAAQS for so long as the area continues to attain the PM_{2.5} NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the suspension of the obligations of Illinois and

Indiana to make submissions for these requirements provides good cause to make this rule effective on the date of publication of this action in the Federal Register, pursuant to 5 U.S.C.

553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Chicago and Evansville areas, do not need time to adjust and prepare before the rule takes effect.

VI. Statutory and Executive Order Reviews.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 et seq.). Because this rule makes

a determination based on air quality data, and results in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR

19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determinations of attainment of the fine particle standard for the Chicago (Illinois and Indiana) and Evansville (Indiana) areas, involves determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there is no federally recognized Indian country located in the states, and EPA notes that it will not impose

substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. These actions are not "major rules" as defined by 5 U.S.C. 804(2).

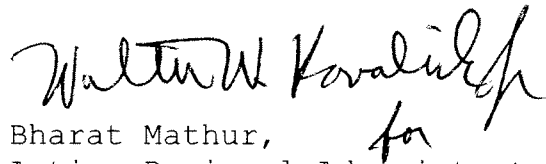
Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and record-keeping requirements.

Date: 11/18/09

Handwritten signature of Walter W. Kovalich in cursive script.

Bharat Mathur, *for*
Acting Regional Administrator, Region 5.

IDENTIFICATION OF DOCUMENT: Approval of PM_{2.5} Attainment Determinations for Chicago and Evansville

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart O - Illinois

2. Section 52.725 is amended by adding paragraph (j) to read as follows:

§ 52.725 Control strategy: Particulates.

* * * * *

(j) Determination of Attainment. EPA has determined, as of [insert date of publication], that the Chicago-Gary-Lake County, IL-IN PM_{2.5} nonattainment area has attained the 1997 PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standard for as long as this area continues to meet the 1997 PM_{2.5} NAAQS.

Subpart P - Indiana

2. Section 52.776 is amended by adding paragraph (s) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(s) Determination of Attainment. EPA has determined, as of [insert date of publication], that the Chicago-Gary-Lake County, IL-IN PM_{2.5} nonattainment area, which includes Lake and Porter counties in IN, and the Evansville nonattainment area have attained the 1997 PM_{2.5} NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standard for as long as the area(s) continue to meet the 1997 PM_{2.5} NAAQS.